

SERVICE DATE - NOVEMBER 8, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33073

COACH USA, INC.--CONTROL EXEMPTION--AMERICAN  
SIGHTSEEING TOURS, INC.; CALIFORNIA CHARTERS, INC.;  
TEXAS BUS LINES, INC.; GULF COAST TRANSPORTATION, INC.  
AND K-T CONTRACT SERVICES, INC.

Decided: November 7, 1996

Petitioner, Coach USA, Inc. (Coach), a noncarrier that controls 10 motor passenger carriers,<sup>1</sup> seeks to be exempted, under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of five additional motor passenger carriers as follows: American Sightseeing Tours, Inc., d/b/a ASTI (ASTI); California Charters, Inc. (CCI); Texas Bus Lines, Inc. (TBL); Gulf Coast Transportation, Inc., d/b/a Gray Line Tours of Houston (GCTI); and K-T Contract Services, Inc. (K-T).<sup>2</sup>

The petition was filed on September 3, 1996, and copies were simultaneously served on the Premerger Notification Office of the Federal Trade Commission and the U.S. Department of Justice. Notice of the proposed transaction was served and published in the Federal Register on October 3, 1996 (61 FR 51742). No comments in opposition to the exemption have been filed. Based on our review of the record, we are exempting the proposed transaction from regulation, and, as requested, we will make the exemption effective on the service date of this decision.

BACKGROUND

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<sup>1</sup> In Notre Capital Ventures II, LLC and Coach USA, Inc.--Control Exemption--Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp., STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996) (Notre Capital), we exempted petitioner and Notre Capital Ventures II, LLC (Notre), from the prior approval requirements of 49 U.S.C. 14303(a)(4), to acquire common control of Arrow Stage Lines, Inc. (MC-29592); Cape Transit Corp. (MC-161678); Community Coach, Inc. (MC-76022); Community Transit Lines, Inc. (MC-145548); Grosvenor Bus Lines, Inc. (MC-157317); H.A.M.L. Corp. (MC-194792); Leisure Time Tours (MC-142011); Suburban Management Corp. (MC-264527); Suburban Trails, Inc. (MC-149081); and Suburban Transit Corp. (MC-115116).

Petitioner was formed by Notre, a venture capital firm that owned a majority of petitioner's outstanding stock. Notre was a party in Notre Capital because of its controlling interest in petitioner; presumably, it is not a party here because it no longer has a controlling interest.

<sup>2</sup> Each of the five carriers holds a satisfactory safety rating from the U.S. Department of Transportation, and none is domiciled in Mexico or owned by citizens of that country.

Petitioner seeks to acquire control over the five motor passenger carriers listed above through stock transactions.<sup>3</sup> To avoid any unlawful control pending a decision granting the exemption, the stock of ASTI, CCI, TBL, and GCTI was placed in separate, independent voting trusts with different trustees.<sup>4</sup> Petitioner did not execute a voting trust agreement for the acquisition of K-T because it only acquired a 50% stock interest.<sup>5</sup> The remaining 50% of K-T's stock is owned by Kerrville Bus Company, Inc. (Kerrville), a motor passenger carrier not involved in this transaction. Petitioner has contracted to acquire Kerrville's remaining 50% interest in K-T stock after the acquisition of control of K-T is exempted from regulation.

ASTI (MC-252353), of Miami, FL, conducts charter operations, primarily originating in the Miami and Ft. Lauderdale, FL area. It is wholly owned by American Bus Lines, Inc., a noncarrier that also owns several intrastate passenger carriers in Florida. ASTI employs approximately 145 people, operates 68 buses, and earned \$6.8 million in revenue in 1995.

CCI (MC-241211), of Long Beach, CA, conducts charter operations, primarily originating in the Los Angeles, Long Beach, and San Diego, CA areas. It also holds California intrastate authority and provides airport shuttle service in the Los Angeles area. CCI employs 167 people, operates 94 buses, and earned approximately \$10.5 million in revenue in 1995.

TBL (MC-37640), of Houston, TX, operates regular-route service between Houston and Galveston, TX, and conducts charter operations, primarily from the Houston area. It also holds Texas intrastate authority and operates various airline and university shuttle services. TBL employs approximately 220 people, operates approximately 120 buses and vans, and earned approximately \$8.6 million in revenue in 1995.

GCTI (MC-201397), of Houston, TX, conducts charter operations, primarily originating from points in Texas. It also holds Texas intrastate authority and operates tour bus services in the Houston area. GCTI employs approximately 250 people, operates approximately 100 buses, and earned approximately \$13.6 million in revenue in 1995.

K-T (MC-218583), of Las Vegas, NV, operates regular-route services between Las Vegas and Reno, NV, via Carson City, NV, and between Las Vegas and Phoenix, AZ, and it conducts charter

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<sup>3</sup> In Notre Capital, Coach and Notre acquired control of the 10 carriers in stock transactions, and a 43% stock interest in Coach was transferred back to the former stockholders of the ten carriers. Similarly, in the proposed transaction, petitioner will acquire all of the stock of the five motor passenger carriers in return for shares of petitioner's own common stock and/or other unspecified, valuable consideration.

<sup>4</sup> Petitioner filed a copy of the trust agreement executed for GCTI.

<sup>5</sup> One individual, Mr. Scott Keller, owns all of the stock of TBL and 50% of the stock of CCI; TBL owns 50% of the stock of K-T.

operations, primarily originating in the Las Vegas area. It also holds Nevada intrastate authority and offers government, casino, and airport contract transportation services. K-T employs approximately 229 people, operates approximately 125 buses, and earned \$16.9 million in revenue in 1995.

Petitioner asserts that there will be no transfer of any Federal or state operating rights or any other licenses belonging to the five carriers being acquired and no change in the nature and scope of their operations.<sup>6</sup> Although each of the five carriers is to continue operating under its own name and in the same manner as before, petitioner asserts that, as in Notre Capital, the transaction will yield substantial economic benefits, particularly with respect to the interest cost savings that result from debt restructuring and the operating cost reductions that result from enhanced volume purchasing power.

Specifically, petitioner claims that economic efficiencies will accrue to the five carriers in the form of lower insurance premiums and volume discounts on equipment and fuel purchases. Petitioner will also supply them with coordinated purchasing services as well as legal and accounting services. Additionally, as members of an expanding corporate family, the five carriers will be able to enter into vehicle sharing arrangements with other carriers in the corporate family to maximize the utilization and operational efficiency of their equipment. They will also benefit from coordinated driver training services and the ability to allocate driver services in the most efficient manner. Petitioner estimates that the transaction will lead to annual efficiency savings of approximately \$1.5 million.

Petitioner plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies that began with the transaction in Notre Capital are largely benefits of scale, and, as such, will be enhanced even more by the proposed transaction and subsequent transactions. Over the longer term, petitioner asserts that its plan to provide centralized marketing and reservation services will further enhance the benefits resulting from these and future control transactions.

Petitioner states that no changes are currently planned in the management personnel of the five carriers. As in Notre Capital, petitioner observes that all collective bargaining agreements with carrier employees will be respected and that employee benefits will improve.

Petitioner notes that 3 of the 5 carriers (TBL, CCI, and K-T) already share common owners and, otherwise, that the 5 carriers are relatively small and operate in diverse markets across the country. According to petitioner, there is only

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<sup>6</sup> Of the four carriers that own intrastate operating rights, petitioner states that no change in the ownership of any operating rights, interstate or intrastate, is contemplated such as would invoke state jurisdiction. In any event, petitioner states, and we agree, that under 49 U.S.C. 14303(f), an exemption will insulate the proposed transaction from any state regulatory requirements that might otherwise apply to the acquisition of control of carriers holding intrastate operating rights.

limited competition in charter and special operations among the 5 carriers or between them and the 10 carriers it already controls, and each of the 5 faces significant competition from other bus firms, other transportation providers, and the private automobile. To the extent that there are overlapping routes or services among the five carriers, petitioner asserts that these are relatively minor and passengers will not be left without intermodal or intramodal competitive alternatives. Aside from charter and special operations, petitioner states that the five carriers operate regionally with a relatively small market share.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our prior approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of this transaction under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with those aspects of the transportation policy contained in 49 U.S.C. 13101(a)(1). By permitting coordinated, centralized planning and management, an exemption will promote safe, adequate, economical, and efficient transportation for the entire corporate family and each of its carrier members individually, and, in so doing, will recognize and preserve the inherent advantage of each mode of transportation [49 U.S.C. 13101(a)(1)(A) and (B)]. By allowing the carriers to rationalize and make the most productive use of their resources, while eliminating duplicate functions, an exemption will encourage sound economic conditions in transportation, including sound economic conditions among carriers [49 U.S.C. 13101(a)(1)(C)]. Finally, by increasing the range and availability of employee benefits, an exemption will encourage fair wages and working conditions [49 U.S.C. 13101(a)(1)(F)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with those aspects of the transportation policy contained in 49 U.S.C. 13101(a)(2). By enhancing the financial resources that would otherwise be available to each of the carriers and by improving their individual financial and managerial abilities, an exemption will enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; improve and maintain a sound, safe, and competitive privately owned motor carrier system; and promote intermodal competition with rail passenger carriers and private automobiles [49 U.S.C. 13101(a)(2)(F), (I), and (K)]. Through vehicle sharing arrangements and other centralized management services, an exemption will support the most productive use of equipment and energy resources [49 U.S.C. 13101(a)(2)(E)]. An exemption will promote fair and expeditious decisions and will permit the carriers to continue to meet the needs of passengers in an efficient manner [49 U.S.C. 13101(a)(2)(B) and (C)]. Also, by improving the finances of the carriers, an exemption will make possible a variety of price and service options tailored to meet changing market demands and the diverse needs of the traveling public, and allow the carriers to provide and maintain service to small communities and intrastate bus services [49 U.S.C. 13101(a)(2)(D) and (G)].

Finally, the motor carrier passenger transportation policy requires Federal/state cooperation to ensure that state regulation does not undermine Federal policy objectives. Because

this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the transportation policy contained in 49 U.S.C. 13101(a)(3).

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transaction is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101. We note that similar considerations warranted approval of the application in GLI Acquisition Company--Purchase--Trailways Lines, Inc., et al., 4 I.C.C.2d 591, 606-07 (1988) (GLI). In GLI, the transportation policy was found to be best served by allowing two major bus systems to consolidate under single management. It was determined that economical and efficient transportation would be promoted because the consolidated entity would be positioned to make the most efficient use of the resources needed to ensure safe and adequate bus service.

Abuse of Market Power. Nor is regulation necessary to protect shippers from the abuse of market power. The petition for exemption is unopposed, and the proposed transaction should not result in a reduced level of service or less competition within the motor passenger industry because the operating companies basically do not compete with each other.

The proposed transaction is projected to yield efficiencies and economies of scale. These benefits should lower operating costs and enhance both the competitive posture of the individual carriers and the level of competition within their respective markets. However, as substantial as these benefits may be, it does not appear that they could affect the competitive position of the five carriers, either separately or in combination, to the extent that there would be increased market power and a realistic potential for market abuse.

Because the five carriers do not dominate any of the markets they serve, the anticipated cost benefits of the proposed transaction are unlikely to result in predatory competition, a significant lessening of the competitive balance, or the abuse of market power through the fares, charges, or levels of service offered to the public. Each carrier operates in a highly competitive environment, one that requires it to compete with other bus companies based in the same region, air and rail service, and the private automobile. With the low entry barriers and pervasive intramodal and intermodal competition that characterizes the bus industry, most opportunities for the abuse of market power are effectively foreclosed.

None of the ten carriers that petitioner already controls or the five it proposes to control has the resources, either individually or in combination, to dominate competition in any aspect of the intercity bus industry. In GLI, it was observed that:

bus passengers, even those with limited access to air, Amtrak, or private auto will continue to be protected from unreasonable rates by the market discipline of intermodal competition since remaining bus firms must set rates and service to attract passengers who do have these options. GLI, 4 I.C.C.2d at 602.

Accordingly, on this record, we find that petitioner will not have the opportunity to obtain the type of concentrated market power that could lead to market abuses.<sup>7</sup>

Public Interest. Exempting the proposed transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed regulatory scrutiny, rather than serving a meaningful public policy or regulatory purpose, would be wasteful both of our resources and of those of petitioner, the five carriers, and the public. On the other hand, an exemption will have multiple beneficial impacts, relating to adequate transportation services, efficient and economic operations, and employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. In addition, exemption will insulate petitioners from burdensome State regulations applicable to intrastate operating rights and leave them with greater resources to support existing and future transportation services. Accordingly, we will grant the request for exemption.

Petitioner has requested expedited action and that the exemption become effective no later than November 8, 1996. It states that, after Federal Register notice was published, a decision was made to make a public stock offering to take advantage of the very favorable market that developed in response to the announcement of the proposed transaction. A successful offering, according to petitioner, would fund additional carrier acquisitions and, in turn, would lead to a further expansion of benefits. Petitioner states that the Securities and Exchange Commission (SEC) approval of the Registration Statement filed in connection with the proposed offering is expected shortly and that the offering can be made once SEC approval and our decision granting this control exemption become effective. To take maximum advantage of the favorable market conditions, petitioner intends to conduct the offering promptly, on or shortly after November 8, 1996. Because the exemption request was not opposed, we expedited our consideration and will make the exemption effective on November 8, 1996, as requested.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 13541, the acquisition by Coach USA, Inc., of control of American Sightseeing Tours, Inc., California Charters, Inc., Texas Bus Lines, Inc., Gulf Coast Transportation, Inc., and K-T Contract Services, Inc., is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).

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<sup>7</sup> Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

2. This exemption will be effective on November 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and  
Commissioner Owen.

Vernon A. Williams  
Secretary